

Applicant: Tchao, Ruy
Application Serial No.: 09/472,490
Filing Date: December 23, 1999
Docket No.: 102-302 RES/CON
Page 2

REMARKS

In the Examiner's Answer in Section 10, Response to Argument, the Examiner states that "no where in the specification does Appellant contemplate any assay other than a chemotaxis assay". In support of this position, the Examiner cites to portions of the specification which specifically describe a chemotaxis assay procedure. The Examiner is correct in noting that these portions of the specification do specifically address a chemotaxis assay. However, the Examiner has failed to note that a significant portion of the specification addresses an assay procedure which does not recite, nor is limited to, a chemotaxis assay.

Referring specifically to column 5, line 30 through column 6, line 39, the broad disclosure of the present invention is set forth. This portion of the specification begins "A particularly novel aspect of the present invention is the use of a radiation opaque membrane which is not substantially transmissive to at least the wavelength of electromagnetic radiation used to stimulate the labeled cells or the wavelength of electromagnetic radiation emitted by the labeled cells." This portion of the specification then goes on to describe how the radiation opaque member permits measurement of radiation emitted from labeled cells that have migrated through the membrane without the need to remove the non-migrated cells from the membrane. The specification describes that such an arrangement is a significant advantage because it avoids the tedious steps of removing the filter and scraping the non-migrated cells from the membrane.

Applicant: Tchao, Ruy
Application Serial No.: 09/472,490
Filing Date: December 23, 1999
Docket No.: 102-302 RES/CON
Page 3

Also, the procedure is nondestructive of the cell sample and, thus, permits repeated measurements.

No where in this description is there any reference to specifically using a chemical attractant to attract the cells through the membrane. Thus, the particularly novel aspect of the present invention may be practiced using any technique which would attract cells through a membrane. It is not limited to chemical attraction. In fact, at column 6, lines 39-43, it specifically states that it is readily within the skill of an ordinary artisan to determine the appropriate pore size for a particular chemotaxis assay without undue experimentation. Thus, a particular chemotaxis assay is merely one type of assay within the skill of the ordinary artisan.

Accordingly, while the Examiner notes that certain portions of the specification specifically relate to a chemotaxis assay procedure, Appellant wishes to note that other portions of the specifications are not so limited. The Board is therefore respectfully requested to take into consideration the entirety of the disclosure.

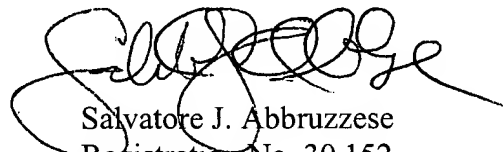
It is respectfully submitted that the disclosure supports the claims under appeal, as the claims are enabled by the specification and are not improperly broadened in a reissue application.

Applicant: Tchao, Ruy
Application Serial No.: 09/472,490
Filing Date: December 23, 1999
Docket No.: 102-302 RES/CON
Page 4

It is, therefore, respectfully submitted that reversal of the Examiner's final rejection is warranted.

Oral argument has been previously requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Salvatore J. Abbruzzese', written in a cursive style.

Salvatore J. Abbruzzese
Registration No. 30,152
Attorney for Applicant(s)

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700